

In 2015, the General Assembly added guidelines to the IMDMA for determining the amount and duration of maintenance. This article focuses on 2018 amendments to the guidelines, which, among making other changes, increase the number of divorces to which they apply.

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Statutory Maintenance Get a 201



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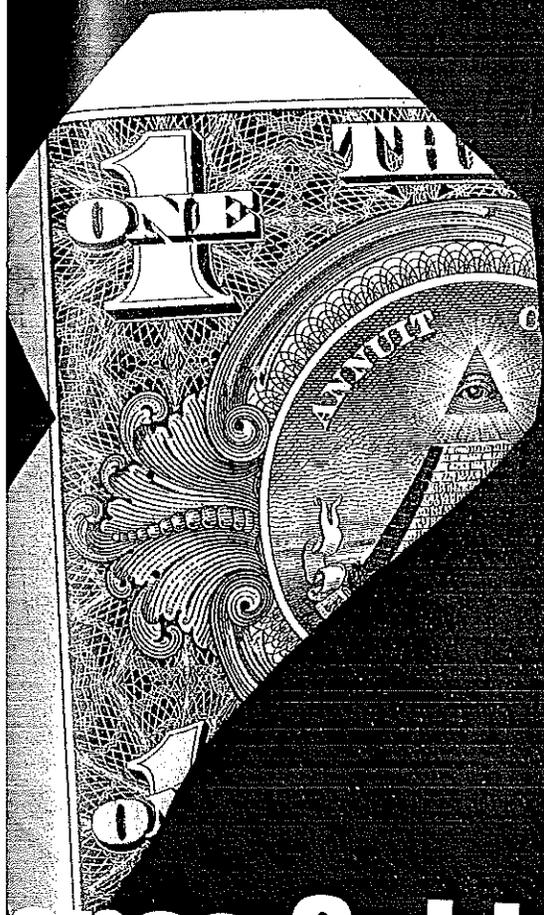
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MAINTENANCE (FORMERLY "ALIMONY") CONSISTS OF PAYMENTS BY ONE spouse to another for a fixed or indefinite period. It is governed by section 504 of the Illinois Marriage and Dissolution of Marriage Act (IMDMA), found at 750 ILCS 5/504, and the cases interpreting that provision. Maintenance generally falls into the following categories: (1) permanent, (2) temporary (sometimes called "rehabilitative") with a set duration, (3) temporary to be reviewed at a given point (aka "reviewable"); and (4) maintenance in gross (a lump sum with no periodic payments).¹

The court must consider a number of factors before determining whether a spouse should receive maintenance. IMDMA section 504(a)(1) was amended in 2015 to list 14 such factors, which include the age, health, education, income, likelihood of future income, needs of the parties, and the length of marriage.

While every case is different, maintenance is likely to be awarded where one spouse either did not work outside the home or earned far less than the other, particularly if the marriage lasted more than 10 years or the proposed recipient is in poor health.

1. See, e.g., *In re Marriage of Hardy*, 2017 IL App (2d) 160956-U.



Maintenance Guidelines Tune-Up

Once a court decides that a spouse should receive maintenance, the next step is determining its amount and duration. Before 2016, the maintenance statute did not provide much guidance, and identical facts in different counties – or even in the same county before a different judge – often produced awards of substantially varying amounts and duration.

Effective in 2015, the legislature amended IMDMA section 504 to provide guidelines for determining these two elements. Courts can deviate from those guidelines, but only if they give reasons for doing so and list what the amount and duration would have been had they followed the guidelines.

Until this year, the maintenance guidelines only applied to marriages where the couple had a combined gross annual income of less than \$250,000. But section 504 was amended effective January 1, 2018, to increase that ceiling to less than \$500,000. Thus, for couples with a combined income of \$500,000 or more, the court can set maintenance at any amount or duration it deems appropriate. For couples with an income of less than \$500,000, the court still has discretion to deviate from guidelines but must make the special findings and disclosure noted above.

TAKEAWAYS >>

- As of January 1, 2018, statutory guidelines for determining the amount and duration of maintenance apply to couples with a combined gross annual income less than \$500,000. Previously, guidelines were applied to couples earning less than \$250,000.
- For couples earning less than \$500,000 a year, specific guidelines must be followed to determine the amount and length of maintenance. The court may deviate from these guidelines; however, it must document specific reasons for doing so. The court has more discretion regarding couples earning \$500,000 or more annually.
- Changes in federal tax law taking effect in 2019 include the elimination of the maintenance deduction. State Senate Bill 2289 is attempting to adjust the current maintenance formula to soften the impact of the new tax law on divorcing couples.

THE IMDMA GUIDELINES HAVE ADDED CERTAINTY TO MAINTENANCE PROCEEDINGS COMPARED TO THE PRE-GUIDELINES STATUTE, UNDER WHICH RESULTS VARIED DRAMATICALLY.

The new formula for determining the dollar amount of maintenance

For couples earning less than \$500,000 annually, the statutory maintenance dollar-amount formula, set out in IMDMA section 504(b-1), is as follows:

(b-1) Amount and duration of maintenance. If the court determines that a maintenance award is appropriate, the court shall order maintenance in accordance with either paragraph (1) or (2) of this subsection (b-1):

(1) Maintenance award in accordance with guidelines. In situations when the combined gross annual income of the parties is less than \$500,000 and the payor has no obligation to pay child support or maintenance or both from a prior relationship, maintenance payable after the date the parties' marriage is dissolved shall be in accordance with subparagraphs (A) and (B) of this paragraph (1), unless the court makes a finding that the application of the guidelines would be inappropriate.

(A) The amount of maintenance under this paragraph (1) shall be calculated by taking 30% of the payor's gross annual income minus 20% of the payee's gross annual income. The amount calculated as maintenance, however, when added to the gross income of the payee, may not result in the payee receiving an amount that is in excess of 40% of the combined gross income of the parties.

For example, if the husband earns \$100,000 and the wife earns \$10,000 per annum and the court orders maintenance (highly likely), the maintenance amount under the guidelines is \$2,333 per month:

$$\begin{aligned} & \$100,000 \times 30\% = \$30,000 \\ & - \$10,000 \times 20\% = \$2,000. \\ & \$30,000 - \$2,000 = \$28,000 / 12 = \\ & \$2333.33 \text{ per month.} \end{aligned}$$

If, however, the husband earns \$100,000 and the wife \$60,000 annually, the wife might be awarded maintenance (not a slam dunk given her income) and the amount under the guidelines would be \$333.33 per month because of the 40 percent cap:

$$\begin{aligned} & \$160,000 \text{ (in combined gross income)} \\ & \times 40\% = \$64,000 \\ & \$64,000 - \text{the wife's annual gross} \\ & \text{income of } \$60,000 = \$4,000 / 12 = \\ & \$333.33 \text{ per month.} \end{aligned}$$

Note that the new federal tax law, which goes into effect in 2019, eliminates deductibility for new maintenance orders. Senate Bill 2289, referred to below in connection with reviewability of maintenance awards, would adjust the formula to account for this change.

Calculating duration under the 2018 amendments

Once the amount is established, the next step is setting the duration of maintenance under IMDMA section 504 (b-1)(1)(B). The duration formula is based on the length of the marriage and a multiplier. The longer the marriage, the greater the multiplier. Under the 2015 version of IMDMA section 504 (as amended in 2015), the formula was as follows:

5 years of marriage or less multiply by .2; More than 5 years but less than 10 years of marriage, multiply by .4; More than 10 years of marriage but less than 15 years multiply by .6; More than 15 years of marriage but less than 20 years multiply by .8; for 20 years or more of marriage, the guidelines called for either permanent maintenance or maintenance for a period equal to the length of the marriage.

The 2018 amendment provides a modified multiplier formula as follows:

Years or more	But less than	Multiplier
0	5	.20
5	6	.24
6	7	.28
7	8	.32
8	9	.36
9	10	.40
10	11	.44
11	12	.48
12	13	.52
13	14	.56
14	15	.60
15	16	.64
16	17	.68
17	18	.72
18	19	.76
19	20	.80

For a marriage of 20 or more years, the court, in its discretion, shall order maintenance for a period equal to the length of the marriage or for an indefinite term.

The length of the marriage is determined as of the date of the filing. For example, if the parties were married six years and the petition for dissolution of marriage was filed on the date of their sixth anniversary, maintenance would be 72 months of marriage x .28 = 20.16 months of maintenance.

ISBA RESOURCES >>

- Mathew Hector, *Decades-Old Maintenance Deduction Eliminated by New Tax Law*, 106 Ill. B.J. 18 (Mar. 2018), <https://www.isba.org/ibj/2018/03/lawpulse/decadesoldmaintenancedeductionelimi>.
- P. Andre Katz & Erin B. Bodendorfer, *The New and Improved Marriage and Dissolution of Marriage Act*, 103 Ill. B.J. 30 (Nov. 2015), <https://www.isba.org/ibj/2015/11/newandimprovedillinoismarriageanddi>.
- Jeffrey L. Hirsch, *Solving for the X & Y: The Illinois Spousal Maintenance Guidelines*, 103 Ill. B.J. 32 (Sept. 2015), <https://www.isba.org/ibj/2015/09/solvingxyillinoispsousalmaintenance>.

Permanent termination of maintenance

In marriages of less than 10 years, the court can set the maintenance for “permanent termination” at the end of the payment schedule under section 504(b-4.5). This provision, which took effect in 2015, is important because in marriages of more than 10 years, the body of caselaw that developed before the recent statutory changes suggests that maintenance awards are broadly reviewable.

That has meant that at the end of the maintenance term, the court could extend maintenance depending on the language of the judgment and the facts at the time of review considered in light of 750 ILCS 5/510, which includes the factors for modifying maintenance based on a change of circumstances. As one court put it, “All maintenance awards are reviewable.”²

Thus, while the legislature has again painstakingly modified the formula for calculating maintenance duration, it has not addressed existing caselaw. The court’s scope of review for these awards thus remains uncertain in the wake of the changes. (For more on this issue, see the companion article on page 30.)

Limiting the “permanent termination” option to awards in marriages of less than 10 years seems to suggest that, for marriages of 10 years or more, maintenance is reviewable at the end of the term regardless of the formula. However, more changes could be on the way. If passed in its current form, Senate Bill 2289 would close this “reviewability loophole” with the following language, which would apply to marriages of any length: “[T]he court shall state whether the maintenance is fixed-term, indefinite, reviewable, or reserved by the court.”

Credit for maintenance paid

Another significant 2018 amendment is 750 ILCS 5/504 (b-1)(1.5), which states as follows: “In the discretion of the court, any terms of temporary maintenance paid by court order pursuant to section 501 may be a corresponding credit to the duration of maintenance set forth in

subparagraph (b-1)(1)(B).”

Thus, in a case in which a temporary order has been entered, the court can give credit to the payor spouse by decreasing the duration of maintenance by the number of months already paid. Not expressly addressed in the statute is what to do when the dollar amounts of maintenance in the temporary and final orders are different. Presumably, courts would take this difference into account when calculating any duration credit given under the final order.

Additionally, because reducing maintenance duration is discretionary, the court may take into account anything it deems appropriate in deciding whether to shorten the length of maintenance based on payments under a temporary order. For example, if the husband was paying temporary maintenance and failed to respond to discovery requests in a timely way, failed to show up to court, or otherwise delayed the proceedings, that might work against him in his request for a credit against the temporary order.

Alternatively, if the wife appeared to be stalling to extract additional maintenance, this might work to her disadvantage. For example, if the wife’s maintenance under the terms of a final judgment was to be for three years and nine months under the guidelines but the husband paid a year of maintenance under a temporary order, the court might credit the husband for the year paid, setting maintenance at two years and nine months.

The newer normal

IMDMA section 504 was amended in 2015, and the entire IMDMA was substantially rewritten in 2016 on many matters, not just maintenance. Now, effective 2018, IMDMA section 504 has again been amended.

Given the newness of these many changes, courts at all levels will need time to digest them. But having guidelines for maintenance determinations is a big step forward. They are the new normal and have added some certainty to maintenance proceedings compared to the IMDMA

UNTIL THIS YEAR, THE MAINTENANCE GUIDELINES ONLY APPLIED TO MARRIAGES WHERE THE COUPLE HAD A COMBINED ANNUAL GROSS INCOME OF LESS THAN \$250,000. THAT CAP HAS BEEN RAISED TO LESS THAN \$500,000.

pre-guidelines statute, under which results varied dramatically. 

2. *Marriage of Selinger*, 351 Ill. App. 3d 611 (4th Dist. 2004); see also *Marriage of Mayhall*, 311 Ill. App. 3d 765 (4th Dist. 2000); *Blum v. Koster*, 235 Ill. 2d 21 (2009).

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